IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Appeal No.479-SB of 1994
Date of Decision : March 16, 2007.

Naib Singh ..... Appellant

Vs.

State of Punjab ..... Respondent

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Mr.A.P.S.Deol, Advocate
for the appellant.

Mr.G.C.Gupta, DAG, Punjab.

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MAHESH GROVER, J. (Oral) :

The appellant has assailed the judgment of the trial court dated 1.9.1994 vide which he was convicted and sentenced to undergo RI for seven years for having committed an offence under Section 307 IPC and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo RI for three months.

The occurrence is stated to have taken place on 28.3.1989 at about 7:00 P.M. when the injured Sita was attacked by the appellant and his father Mangat Ram who took objection to his taking bath in the street in front of their house. The appellant Naib Singh assaulted Sita Singh with a *gandasa*. Mangat Ram is stated to have attacked on him with a *soti*. The

medico-legal report reveals the presence of following injuries :-

> ***"1.*** *Incised wound 7.5 x 1 cm over the fore head on left side running vertically 5 cm above the left eye brow. It was bone deep and there was infective discharge from the wound.*
>
> ***2.*** *Incised wound 7.5 cm x 1 cm running transversely in the middle of the scalp. It was bone deep. Underlying bone was cut. Infective discharge present from the wound.*
>
> ***3.*** *Incised wound 2.5 cm x 0.5 cm over the back running transversely in the middle of the spinmin lumber region. Clotted blood was present in the wound."*

The FIR was registered on 30.3.1989 at about 4:00 P.M. The injured Sita Singh was examined by PW-1 Dr.Hardev Singh (wrongly mentioned as Harbans Singh in the judgment of trial court).

After completing the investigative process, challan under Section 173 of the Cr.P.C. was presented against the appellant and his co-accused Mangat Ram, upon which the case was committed to the Court of Sessions for trial. The appellant and Mangat Ram were charge-sheeted for having committed an offence under Section 307/34 IPC.

In order to establish the case against the accused persons, the prosecution examined as many as five witnesses.

On the statements recorded under Section 313 of the Cr.P.C., the accused persons pleaded false implication and further pleaded that Sita Singh had abducted Murti of Village and he had illicit relations with Maina

wife of Birchhi. A complaint had been made by Birchhi to Mangat Ram and Panchayat had summoned Sita. In fact, the injuries had been caused by some unknown assailants when Sita was allegedly under the influence of *bhaang* but the appellants have been named falsely. In support of their plea, they produced three witnesses.

After appraisal of the evidence before it, the trial court went on to convict the appellant under Section 307 of the IPC and sentenced him to undergo RI of seven years. His co-accused Mangat Ram had died during the course of trial.

The aforesaid conviction and sentence awarded by the trial court has been assailed by the appellant in the present appeal.

It was contended by the learned counsel for the appellant that the conviction under Section 307 of the IPC could not have been awarded to the appellant for the reason that there was no conclusive medical test opinion on the basis of which it could be said that the injury suffered by the complainant was dangerous to life. No X-Ray examination was got done and rather, for the first time, the complainant was examined after a considerable delay and the opinion of the doctor is based on the impression that he gathered with naked eye. On the strength of this, it was sought to be contended that at best, the conviction could have been construed to be under the provisions of Section 323 IPC. Reliance was placed on a Division Bench judgment of this Court in the case of ***State of Punjab vs. Manga Singh*** reported as ***1992 (2) R.C.R.(Criminal) 144***.

On the other hand, learned counsel for the State contended that the injury caused was with a sharp edged weapon and the offence was serious enough, considering the fact that there was hardly any provocation for justifying the assault.

I have heard learned counsel for the parties and have perused the record.

The contention, as raised by the learned counsel for the appellant, that in the absence of any form of conclusive opinion which could have been formed on the basis of X-Ray report, the doctor could not have opined regarding the injury being dangerous to life, is not tenable for the simple reason that the examination of the doctor when read in its entirety, goes on to show the gravity of the injury so inflicted upon the complainant. The relevant portion of his statement is as follows :-

> *".....Dr. Chadha was working under me in Civil Hospital, Bathinda. I, therefore, identify his signatures. Vide my endorsement Rx.P.E., I opined injury No.2 dangerous to life. X-Ray showed complete fracture of the skull under injury No.2. Sita had developed paralysis of the left hand on 3.4.89, due to pressure of blood in the brain or injury to the brain. It could be due to injury No.2 on the person of Sita. I have examined Sita today in court. He has got weakness of left arm."*

There is a reference to the X-Ray. However, for the reason best known to the prosecution, the same has not been produced. This is a glaring lapse on the part of the prosecution which has deprived the courts of the clear picture indicating the magnitude of the offence committed by the appellant. The benefit of such a lapse has only to go to the appellant. The incident as such has not been denied and neither has been the causing of injury with the weapon i.e. *gandasa*. The offence, in the absence of any

conclusive medical opinion, attracting the provisions of Section 307, could at best be termed to be an offence under Section 324 of the IPC. That apart, the incident is stated to have sparked off from a small incident based on the behaviour of the complainant, which was found to be offensive by the appellant and there has been no premeditative intent in the commission of offence.

Consequently, the appellant is directed to be convicted under the provisions of Section 324 of the IPC. Considering the fact that the appeal is of the year 1994 and the appellant would be required to be taken into custody when he would have advanced and progressed in life, the ends of justice would be met if the sentence of the appellant is reduced to two years.

Disposed of with the modification as aforesaid.

March 16, 2007 **(MAHESH GROVER)**
monika **JUDGE**